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PETITION OF

MICHAEL H. DITTON

CASE NO. PUC990176

To investigate Bell Atlantic-Virginia, Inc.

REPORT OF ALEXANDER F. SKIRPAN, JR., HEARING EXAMINER

June 1, 2001

In his petition, Michael Ditton complains that Verizon failed to provide adequate, reliable, and private telephone service as required by Virginia law. Remedies sought by Mr. Ditton include a declaratory judgment, mandamus, an injunction, damages, imposition of a \$10,000 a day fine, and a temporary government take-over of Verizon's Virginia operations. Verizon maintains, and Staff supports, that Verizon provided adequate service to Mr. Ditton.

HISTORY OF THE CASE

On October 7, 1999, Michael H. Ditton filed a Verified Petition for Redress and Relief ("Petition")¹ with the Commission requesting that it investigate Bell Atlantic-Virginia, Inc., now known as Verizon-Virginia, Inc. ("Verizon"), and order Verizon to provide Mr. Ditton with adequate and reliable telephone service.² Specifically, Mr. Ditton alleged that Verizon: (i) failed to provide adequate telephone service; (ii) acquiesced to illegal use of his telephone lines by another; (iii) lied concerning the quality and security of his service; (iv) obstructed justice; (v) interfered with and obstructed his telephone line messages; (vi) refused to enforce wiretapping law; (vii) failed to enforce its privacy policies; and (viii) failed to protect him against wiretapping, harassing, and annoying telephone calls. Mr. Ditton requested, among other things, that the Commission investigate Verizon and take all appropriate actions to enforce its regulations, rules and orders, including suspending Verizon's license to furnish telephone service in Virginia.

On October 19, 1999, Mr. Ditton filed a Verified Petition and Motion for Injunctive Relief ("Motion").³ In his Motion, Mr. Ditton asked the Commission to enjoin Verizon from terminating his telephone service. In response, Staff took steps to ensure that Mr. Ditton's telephone service was not disconnected during the pending investigation and attempted to resolve the matter informally.⁴

¹ Exhibit MHD-2.

² For simplicity, Verizon will be used throughout this Report even though the Company was known as Bell Atlantic at the time of Mr. Ditton's Petition.

³ Exhibit MHD-3.

⁴ Held, Tr. at 25.

On December 1, 1999, Verizon filed its Answer in which it essentially denied the allegations made by Mr. Ditton. On December 21, 1999, Mr. Ditton filed a “Replication to Respondents’ Answer.”

On March 10, 2000, Patrick W. Dolby, a telecommunications specialist in the Commission’s Division of Communications, filed an informal report outlining the results of Staff’s investigation and testing of the telephone service provided by Verizon to Mr. Ditton.⁵ In his report, Mr. Dolby concluded that “there is nothing that Mr. Ditton has experienced with his computer/fax/telephone/internet equipment working on a single telephone line that most users under similar circumstances haven’t also experienced on a routine basis.”⁶

On March 27, 2000, Mr. Ditton filed a reply to Staff’s informal report. In his reply, Mr. Ditton maintained that Staff’s report failed to adequately describe and address the matters alleged in his Petition. Mr. Ditton requested that the Commission docket his complaint as a formal proceeding. On May 2, 2000, the Commission issued its Procedural Order in which it formally docketed this matter and appointed a Hearing Examiner to conduct all further proceedings.

Pursuant to Hearing Examiner’s Ruling dated May 31, 2000, Mr. Ditton’s Petition was scheduled for telephonic hearing on July 26, 2000, and a procedural schedule was established for the filing of prepared testimony and exhibits. On June 15, 2000, Mr. Ditton filed a Request for Extension of Time and Postponement, seeking additional time to enable him to recover documents and other evidence taken from him in January 2000, in relation to a matter pending before the Fourth Circuit Court of Appeals. By a Hearing Examiner’s Ruling dated June 20, 2000, this matter was continued generally.

On June 26, 2000, Verizon moved to dismiss or, in the alternative, to suspend discovery. By Hearing Examiner’s Ruling dated June 28, 2000, Verizon’s motion to dismiss was denied and discovery was suspended until the establishment of a new procedural schedule. On November 13, 2000, Mr. Ditton requested that the Commission proceed with this matter and establish a new procedural schedule. A Hearing Examiner’s Ruling dated November 21, 2000, established a new procedural schedule, which, among other things, scheduled a telephonic hearing for February 21, 2001.

On December 14, 2000, Mr. Ditton filed a Motion to Compel Responses to Discovery Requests. According to Mr. Ditton, Verizon failed to either make a timely objection or submit a response to discovery originally propounded by Mr. Ditton on June 21, 2000. A Hearing Examiner’s Ruling dated December 20, 2000, granted Mr. Ditton’s motion to compel and directed Verizon to respond to Mr. Ditton’s discovery requests as soon as possible. In addition, Mr. Ditton was advised to file a motion requesting additional time if he was unable to file direct testimony and exhibits on December 28, 2000, as scheduled. Subsequently, Verizon provided responses to Mr. Ditton’s discovery requests and Mr. Ditton prefiled his direct testimony and exhibits on December 28, 2000.

⁵ Exhibit PWD-5, Attachment 2.

⁶ *Id.* at Attachment 2, page 4.

On February 2, 2001, Mr. Ditton filed his Second Motion to Compel Responses to Discovery Requests, Special Motion to Overrule Objections and Motion for Sanctions. These motions were denied in a Hearing Examiner's Ruling dated February 13, 2001.

On February 21, 2001, a hearing was convened at 11:00 a.m. in the Commission's 11th Floor conference room. Mr. Ditton appeared *pro se* and attended telephonically from Bozeman, Montana. Michael P. Oates, Esquire, and David W. Ogburn, Jr., Esquire, appeared on behalf of Verizon. Allison L. Held, Esquire, represented the Staff. A transcript of the hearing is filed with this Report.

SUMMARY OF THE RECORD

On December 23, 1998, with the payment of a \$40.00 deposit, Mr. Ditton became a Verizon customer at Apartment A-103, 200 South Van Dorn Street, Alexandria, Virginia.⁷ Specifically, Mr. Ditton subscribed to a single line with standard local telephone service, long distance service via Sprint, Caller ID Deluxe, Call Waiting, Home Voice Mail (including Fixed Call Forwarding/Busy Don't Answer), and Guardian inside wire service.⁸ Mr. Ditton used his telephone line for voice calls, Internet access, and facsimile communications.⁹ Thus, to his single telephone line Mr. Ditton connected a telephone, computer (for Internet access and for telephone answering and messaging), and facsimile equipment.¹⁰ In addition, Mr. Ditton subscribed to an Internet Service Provider located in Loveland, Colorado.¹¹ This meant that Mr. Ditton had to make a long distance toll call each time he attempted to access the Internet.¹²

Soon after establishing telephone service with Verizon, Mr. Ditton began experiencing troubles with communications over his telephone line.¹³ Indeed, Mr. Ditton supplied a forty-eight-page table listing 314 communications disruptions that occurred between December 27, 1998, and January 18, 2000, the date he was forcibly evicted from his apartment by City of Alexandria Sheriff's deputies.¹⁴ Some examples of the communications disruptions reported by Mr. Ditton are provided below:¹⁵

#	DATE/ TIME (E.S.T)	TASK	EVENT	ACTION	REMARKS
2	12/28/98 0704	Access Email	MS OE Dial-Up "Error 629 (x1) The port was disconnected by the remote computer"/No Carrier/Connect to Sprint not to ISP; Error 720 (x2) no protocols	Call BAVI/Lucille Costillo? [BAVI has some record of 12-28-98 entry as	0723 Clicking noise, disconnected, voice recording,

⁷ Exhibit MHD-1, at 1-2.

⁸ *Id.* at 6; Exhibit SBB-4, at 2; Beach, Tr. at 113.

⁹ Exhibit MHD-1, at 3.

¹⁰ *Id.* at 7-8.

¹¹ *Id.* at 9.

¹² *Id.*

¹³ *Id.* at 5.

¹⁴ *Id.* at 19-20; Exhibit MHD-6, Attached Exhibit No. 44.

¹⁵ Exhibit MHD-6, Attached Exhibit No. 44.

			configured/No Carrier/Connect to Sprint not ISP	shown on VER000115 but no record disclosed in discovery]	open line alarm
37	1/21/99 1847	Use Internet	MS OE webpage appears after select VSB webpage/Communication disconnected/No Carrier	Call BAVI/[BAVI states "reporting noise on line"]	Disconnected; Garbled text/programming symbols from 1/21/99 18:37:10.96 until 18:37:11.05/ First entry in BAVI chronology and computerized "trouble history" records
80	2/27/99 1836	Annoying Call/line Inoperative	Caller identification states incoming call from (617) 734-0537 SLOAN, EPIDIDEMIOL; "If you would like to make a call, please hang up and try again. If you need help, hang up and then dial your operator."	Call Trace; Call Bell Atlantic Repair/ [BAVI states "reporting hearing others on line"]	Answered telephone with hello who is this, silence, hear telephone rings on telephone line, pre-recorded voice recording and open line alarm noise sound
96	3/5/99	Use Internet	HTTP 404 Error Not Found; MS IE connection with server could not be established	Noted/[BAVI states 1127 "reporting cut off while on Internet" and "requested line test" "Tested OK" and refer to ISP]	PB Computer
133	4/6/99 a.m.	Caller ID	No telephone number caller identification on incoming call?	Reported to BAVI?/[BAVI states 4/7/99 0859 "reporting called ID did not register 1 call yesterday. Line tests OK"]	
152	4/13/99 1621	Annoying call/line inoperative	Voice message on Bitware answering system: "If you would like to make a call, please hang up and try again. If you need help, hang up and then dial your operator." Caller ID states "out-of-area"	Reported to BAVI 1622 [BAVI states 1615! before incident occurred and "*A* ALL PHONES,SET TROUBLE BRING SET"; Ex A states: "reporting can't be called and he has set trouble. Wants Tech to bring set."]	Answered telephone with hello who is this, silence hear telephone rings on telephone line, pre-recorded voice recording and open line alarm noise sound
172	4/23/99 0722	Access Email	MS OE Dial Up "Error 678 There is no Answer"/No Carrier/Connect to Sprint not	Reported to BAVI/0721 Donna	Compaq Computer modem

			to ISP	____; she states “nothing on line, tests evenly, there is dial tone, slow down” [not check equipment] [BAVI states “reporting can’t connect to Internet. Test OK and advised to check equipment.”]	log reports No Carrier received within 1 minute 2 seconds of sending dialing string/No PPP log entry
218	5/24/99 0707	Electrical Power out	AT&T Caller ID unit display states “power failed” and lists 14 instead of 50 saved calls with 14 calls sequenced out-of-order chronologically and repetitively	Report to Oakwood/FBI	After this my Sansui 737 stereo turntable is disabled; reversed platter spin direction, spins uncontrollably fast and is unstoppable unless disconnected from electrical power
236	6/2/99 1404	Send Facsimile	No Answer (804) 783-2294 LeClair, Ryan, P.C. dedicated facsimile line	Reported to BAVI/ Jim ____ 1930 calls from (703) 370-3408 and (703) 379-9220 testing in near perfect condition/[BAVI states 1506 “reporting “line cuts off while in use” “possible bad jack”]	HP OfficeJet LX facsimile machine previously connected to same fax number
269	8/1/99	Annoying call/ inoperative line	Incoming voice telephone call on BitWare answering system: telephone ring on line then, “If you would like to make a call, please hang up and try again. If you need help, hang up and then dial your operator.” Followed by harsh open line alarm sound. Call return states “service cannot be activated because the telephone number is not in our service area” [Caller ID unit disabled]	Noted/Wrote BAC CEO	
279	8/13/99 0821	Use Internet	MS IE Connection with server was reset during download of McAfee virus detection files	PING Comand	PB Computer/ 254-349 ms for download.mcafee.com [208.228.230.100]
308	1/8/00 p.m.	Incoming hacking call	After incoming telephone call a computer error message appears on PB Computer stating the file you are trying to access is already in use when only files in use were BitWare answering system files	Reported to BAVI?/Report to Oakwood/Report to Code Enforcement Bureau/Report to	PB Pentium Computer

				City Police	
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Nonetheless, Mr. Ditton qualifies his report with the following statement:

This report describing events and occurrences from December 23, 1998 until January 18, 2000 is necessarily incomplete because of documents, computers, and answering machine tapes remain stolen from Petitioner as of January 18, 2000.¹⁶

The table below provides a summary of the communications disruptions listed by Mr. Ditton in his report. The first column lists the type of problem experienced, *i.e.* e-mail access, Internet access, etc. The second column provides a count of the number of disruptions listed by Mr. Ditton in his report. The third column provides a count of the number of complaints Mr. Ditton claims he lodged with Verizon for each type of communications disruption.

Type of Disruption	Number of Disruptions	Disruptions Reported to Verizon
E-mail Dial-Up Access	97	8
Internet Access	132	9
Caller ID	4	2
Voice Messaging and Answering	11	3
Verizon Repair Scheduling	1	0
Facsimile	12	3
Annoying Calls	18	12
No Dial Tone	2	2
Call Completion	1	1
Billing	1	1
Other Disruptions	6	6
Power Outage	4	0
No Disruption-Other Event Noted	25	0
Total	314	47

Though evicted from his apartment on January 18, 2000, Mr. Ditton continued as a Verizon customer. Because he considered the eviction to be illegal, forcible, and involuntary, Mr. Ditton attempted to retain his telephone service and to retain his telephone number.¹⁷ Mr. Ditton continued as a full service Verizon customer until March 10, 2000, when his service was converted to a remote call forward line, *i.e.*, a voice mail box.¹⁸ On May 2, 2000, Verizon, with

¹⁶ *Id.* at 48.

¹⁷ Ditton, Tr. at 54-55.

¹⁸ Exhibit SBB-4, at 3; Beach, Tr. at 60.

Staff's approval, terminated Mr. Ditton's service for nonpayment.¹⁹ The final bill from Verizon to Mr. Ditton totaled \$466.24.²⁰

Underlying Mr. Ditton's compilation of his list of communications disruptions is his contention that his telephone line has been tapped or tampered with. Several of the counts in Mr. Ditton's Petition allege that Verizon permitted interference and interception of his telephone line communications.²¹ Mr. Ditton attributes the communication problems listed in his exhibit, as well as other problems or coincidences, to the interference and interception of his telephone line communications. For example, on December 14, 1999, Mr. Ditton attempted to call the Commission, but mistakenly dialed the number of someone at the Virginia Department of Transportation ("VDOT").²² The next day, Mr. Ditton claims to have received mail at his apartment addressed to the VDOT employee.²³

Moreover, Mr. Ditton appears to be convinced that Verizon is covering-up an illegal wiretap. As Mr. Ditton offered during his opening statement:

[T]here is no court order of a wiretap. Federal law requires notice to be given of a substantive wiretap. I've never received such notice. So the records show that a cover-up is occurring, that the actions of [Verizon] are outrageous.²⁴

During the hearing, Mr. Ditton attributed the interference and interception of his telephone line communications to a former employer.

I have used computers often, and I've used different computers often.

It was not until after I was fired by the law firm of Holland & Knight on April 5th, 1994, that I experienced – that I noticed such tremendous difficulties with my telephone communications, interference, interruptions, disconnections. I was fired by the law firm of Holland & Knight on April 5th, 1994, after I reported to Richard O. Duval, my supervisor/partner, that I had gone to the FBI and complained about wiretapping. That was the immediate impetus for me being physically escorted from the office and forbidden to return.

Subsequently, there were pretextual reasons given, and those pretextual reasons were disproved, and the fact remains that at this moment I have no other suspects for the type of illegal

¹⁹ Beach, Tr. at 60.

²⁰ Exhibit MHD-1, Attached Exhibit No. 35.

²¹ Petition at Counts II, IV through VIII.

²² Exhibit MHD-1, at 17.

²³ *Id.*

²⁴ Ditton, Tr. at 19-20.

activity I have complained about, other than S. Scott Morrison and Charles F. Mitchell of Holland & Knight, motivated to retaliate against me for suing them for wiretapping in the United States District Court for the District of Columbia. It's damaged my credibility, to make me appear crazy, to harass me, to obtain and extort from me a unilateral relief of liability when they refused a settlement contract.²⁵

In his Petition, Mr. Ditton requested that the Commission investigate Verizon to determine whether it had permitted or complied with applicable law concerning wire taps, third-party interference or interception of his local telephone line and service.²⁶ Mr. Ditton further requested that during such an investigation the Commission order Verizon to provide him with adequate and reliable telephone service and not to charge any fees until it provides adequate and reliable service.²⁷ Finally, Mr. Ditton asked that the Commission enjoin Verizon from violating any statute, rule, or order related to the furnishing of telephone service in Virginia and that the Commission take any and all appropriate action, including suspending Verizon's license to furnish telephone service within Virginia, until Verizon satisfies the Commission that it is fulfilling its duties.²⁸

As indicated above, at the time Mr. Ditton filed his Petition, he was a customer of Verizon and lived at his apartment in Alexandria. As of the hearing, Mr. Ditton was no longer a customer of Verizon and lived in Bozeman, Montana. Nonetheless, during his opening statement, Mr. Ditton described the appropriate remedy for this case to include "a declaratory judgement for Petitioner, mandamus, an injunction, damages, [and] \$10,000 a day fine for failure to abide by the Commission's orders"²⁹ In addition, Mr. Ditton urged the Hearing Examiner to "recommend that the governor take over [Verizon] and run that company until such time as responsible officials are found to run that company in the public interest."³⁰

Verizon witness Susan B. Beach, senior specialist – appeals for Verizon, testified concerning complaints lodged by Mr. Ditton with Verizon and the responsive actions taken by Verizon.³¹ Ms. Beach provided a summary exhibit, listing approximately twenty-seven trouble reports submitted by Mr. Ditton to Verizon between January 1, 1999, and October 22, 1999.³² In addition, the summary exhibit shows that in response to complaints made by Mr. Ditton, Verizon dispatched a technician on twelve occasions and performed other line tests on ten other occasions.³³ On each of these occasions, Verizon found its telephone line serving Mr. Ditton to be "OK."³⁴ Moreover, Ms. Beach states:

²⁵ *Id.* at 185-86.

²⁶ Exhibit MHD-2, at 16-17.

²⁷ *Id.* at 16.

²⁸ *Id.* at 16-17.

²⁹ Ditton, Tr. at 21.

³⁰ *Id.*

³¹ Exhibit SBB-4.

³² *Id.* at Attached Exhibit No. A.

³³ *Id.*

³⁴ *Id.*

In response to Mr. Ditton's reports of suspected wire taps, the Company confirmed, on multiple occasions, that there were no unlawful taps on Mr. Ditton's line. As the Company explained repeatedly to Mr. Ditton, it is not at liberty to disclose the presence of any lawfully-ordered wire taps.³⁵

Staff presented the testimony of Patrick W. Dolby, a telecommunications specialist in the Commission's Division of Communications.³⁶ In his testimony, Mr. Dolby describes his investigation of the telephone facilities used by Verizon to provide service to Mr. Ditton at his apartment in Alexandria. Mr. Dolby reviewed the results of tests conducted by Verizon and performed his own on-site inspections and tests.³⁷ Based on these tests, Mr. Dolby concluded that the local loop or the telephone line serving Mr. Ditton was functioning properly.³⁸ Mr. Dolby did not find any evidence of wire taps on Mr. Ditton's telephone circuit.³⁹ As to the troubles reported by Mr. Ditton, Mr. Dolby submitted the following:

Generally speaking, there is nothing that Mr. Ditton has experienced with his computer/fax/telephone/internet equipment working on a single telephone line that most users under similar circumstances haven't also experienced on a routine basis.⁴⁰

On cross-examination, Mr. Dolby reiterated this point.

Q. [by Mr. Ditton] You have never actually experienced everyone [sic] of the types of things that are described on Petitioner's Exhibit 44, have you?

A. Yes. As a matter of fact, I have. I . . . get error numbers on Microsoft's dial up equipment, and also on my fax machine, and also on my answering machine and my telephone.⁴¹

DISCUSSION

This case poses three factual issues. First, did Verizon provided Mr. Ditton with reasonably adequate service and facilities? Second, did anyone interfere with or intercept Mr. Ditton's telecommunications from facilities provided by Verizon? Third, if someone did interfere with or intercept Mr. Ditton's telecommunications from facilities provided by Verizon, did Verizon allow, permit, or cover-up such interference or interception?

³⁵ *Id.* at 3-4.

³⁶ Exhibit PWD-5.

³⁷ *Id.* at 3-4.

³⁸ *Id.*

³⁹ *Id.* at Attachment 2 at 3.

⁴⁰ *Id.* at Attachment 2 at 4.

⁴¹ Dolby, Tr. at 156-57.

Virginia Code § 56-234 makes it the duty of every public utility, such as Verizon, operating in the Commonwealth “to furnish reasonably adequate service and facilities” In his Petition, Mr. Ditton points to a letter received from Verizon in which states, “We look forward to serving your needs with local phone service that is 99.9% ReliableSM.”⁴² Mr. Ditton attempts to compare Verizon’s stated reliability to the reliability of his telephone service which he calculates to be less than 40%, (*i.e.*, calls completed successfully without any eventual interference).⁴³ However, as both Verizon witness Beach and Staff witness Dolby point out, nearly all of the telecommunications disruptions complained of by Mr. Ditton are more likely problems caused by non-Verizon supplied service and equipment.⁴⁴ As Mr. Dolby offered during redirect examination:

Q. With regard to the problems that were enumerated in the first petition that was filed, problems with the fax machine, Internet access, and hang up, problems of those sort, can you explain in your expert opinion what could cause those problems, if it’s not interference on the telephone line?

A. It could well be interference on the telephone line, but it’s not in . . . the section between Mr. Ditton’s office and his central office. Once it gets into the central office, once the call – whether it’s made by computer or made by voice, once it gets past the central office, you haven’t got any idea where it goes to or where the problem is.⁴⁵

Based on: (i) the multiplicity of connections required to complete Internet access through a Colorado Internet Service Provider, (ii) the complex arrangement of telephone, computing, answering machine, and facsimile equipment sharing a single telephone line, (iii) the results of electronic tests of the telephone line serving Mr. Ditton that were conducted by both Verizon and Staff, and (iv) Mr. Dolby’s testimony that the problems experienced by Mr. Ditton were routine given his equipment configuration, I find that Mr. Ditton has failed to show that any of the communications disruptions he experienced were the result of service or facilities provided by Verizon. Consequently, concerning the service provided by Verizon to Mr. Ditton, I find that Verizon satisfied its statutory requirement “to furnish reasonably adequate service and facilities.”

As to the second question of whether anyone interfered with or intercepted Mr. Ditton’s telecommunications from facilities provided by Verizon, Mr. Ditton’s telephone line was tested on numerous occasions. No illegal wiretaps were ever found. Indeed, Verizon witness Beach explicitly testified that there were no illegal wiretaps on Mr. Ditton’s telephone line.⁴⁶ Staff witness Dolby investigated this issue and was unable to find any evidence of an illegal wiretap. In summary, I can find no credible evidence in the record that even remotely suggests that

⁴² Exhibit MHD-2, at Attached Exhibit No. 1.

⁴³ Exhibit MHD-1, at 11-12, 15.

⁴⁴ Beach Tr. at 109-11; Dolby, Tr. at 162-67, 181-82.

⁴⁵ Dolby, Tr. at 181-82.

⁴⁶ Exhibit SSB-4, at 3-4.

anyone interfered with or intercepted Mr. Ditton's telecommunications. Simply put, there were no illegal wiretaps, and consequently, no conspiracy or cover-up on the part of Verizon.

Accordingly, ***I RECOMMEND*** that the Commission enter an order:

- (1) ***ADOPTING*** my findings;
- (2) ***DISMISSING*** Mr. Ditton's Petition with prejudice; and
- (3) ***STRIKING*** this matter from the Commission's docket of active cases.

COMMENTS

The parties are advised that pursuant to Rule 5:16(e) of the Commission's Rules of Practice and Procedure,⁴⁷ any comments to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen copies, within fifteen days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P. O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document that copies have been mailed or delivered to all other counsel of record and to any party not represented by counsel.

Respectfully submitted,

Alexander F. Skirpan, Jr.
Hearing Examiner

⁴⁷ 5 VAC 5-10-420 F.